

STATE OF RHODE ISLAND GENERAL LAWS (2002)

TITLE 44

Taxation

CHAPTER 44-33.2

Historic Structures – Tax Credit

44-33.2-1 Declaration of purpose.

The general assembly finds and declares that Rhode Island's historic structures have experienced high vacancy rates and physical deterioration. Without adding economic incentive, these structures are not viable for the redevelopment and reuse by modern commercial, residential or manufacturing enterprises and will continue their physical deterioration. The redevelopment and reuse of these historic structures are of critical importance to the economic measures and will assist in stimulating the reuse and redevelopment of historic structures and will improve property values, foster civic beauty, and promote public education, pleasure, and welfare. The purpose of this chapter is to create economic incentives for the purpose of stimulating the redevelopment and reuse of Rhode Island's historic structures.

44-33.2-2 Definitions. – As used in this chapter:

(1) "Certified historic structure" means a property which is located in the state of Rhode Island and is:

(i) Listed individually on the National Register of Historic Places; or

(ii) Listed individually in the state register of historic places; or

(iii) Located in a registered historic district and certified by either the commission or Secretary of the Interior as being of historic significance to the district.

(2) "Certified rehabilitation" means any rehabilitation of a certified historic structure consistent with the historic character of such property or the district in which the property is located as determined by the commission guidelines.

(3) "Commission" means the Rhode Island historical preservation and heritage commission created pursuant to § 42-45-2.

(4) "Holding period" means twenty-four (24) months after the commission issues a certificate of completed work to the owner. In the case of a rehabilitation which may reasonably be expected to be completed in phases as described in subdivision (8) of this section, the term "holding period" shall be extended to include a period of time beginning on the date of issuance of a certificate of completed work for the first phase or phases for which a certificate of completed work is issued and continuing until the expiration of twenty-four (24) months after the certificate of completed work issued for the last phase.

(5) "Placed in service" means that substantial rehabilitation work has been completed which would allow for occupancy of the entire structure or some identifiable portion of the structure, or the owner has commenced depreciation of the qualified rehabilitation expenditures, whichever occurs first.

(6) "Qualified rehabilitation expenditures" means any amounts expended in the rehabilitation of a certified historic structure properly capitalized to the building and either: (i) depreciable under the Internal Revenue Code [26 U.S.C. § 1 et seq.], or (ii) made with respect to property (other than the principal residence of the owner) held for sale by the owner. Notwithstanding the foregoing, except in the case of a nonprofit corporation, there will be deducted from qualified rehabilitation expenditures for the purposes of calculating the tax credit any funds made available to the person (including any entity specified in § 44-33.2-3(a)) incurring the qualified rehabilitation expenditures in the form of a direct grant from a federal, state or local governmental entity or agency or instrumentality of government.

(7) "Registered historic district" means any district listed in the National Register of Historic Places, or the state register of historic places.

(8) "Substantial rehabilitation" means, with respect to a certified historic structure, that the qualified rehabilitation expenses of the building during the twenty-four (24) month period selected by the taxpayer ending with or within the taxable year exceed fifty percent (50%) of the adjusted basis in such building and its structural components as of the beginning of such period. In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, the above definition shall be applied by substituting "sixty (60) month period" for "twenty-four (24) month period".

(9) "Exempt from real property tax" means, with respect to any certified historic structure, that the structure is exempt from taxation pursuant to § 44-3-3.

(10) "Principal residence" means the principal residence of the owner within the meaning of § 121 of the Internal Revenue Code [26 U.S.C. § 121] or any successor provision.

44-33.2-3 Tax credit.

(a) Any person, firm, partnership, trust, estate, limited liability company, corporation (whether for profit or non-profit) or other business entity that incurs qualified rehabilitation expenditures for the substantial rehabilitation of a certified historic structure, provided the rehabilitation meets standards consistent with the standards of the Secretary of the United States Department of the Interior for rehabilitation as certified by the commission, shall be entitled to a credit against the taxes imposed on such person or entity pursuant to chapter 11, 12, 13, 14, 17 or 30 of this title in an amount equal to thirty percent (30%) of the qualified rehabilitation expenditures.

(b) Tax credits allowed pursuant to this chapter shall be allowed for the taxable year in which such certified historic structure or an identifiable portion of the structure is placed in service provided that the substantial rehabilitation test is met for such year.

(c) If the amount of the tax credit exceeds the taxpayer's total tax liability for the year in which the substantially rehabilitated property is placed in service, the amount that exceeds the taxpayer's tax liability may be carried forward for credit against the taxes imposed for the succeeding ten (10) years, or until the full credit is used, whichever occurs first for the tax credits. Credits allowed to a partnership, a limited liability company taxed as a partnership or multiple owners of property shall be passed through to the persons designated as partners, members or owners respectively pro rata or pursuant to an executed agreement among such persons designated as partners, members or owners documenting an alternate distribution method without regard to their sharing of other tax or economic attributes of such entity.

(d) Provided, that the taxpayer has not claimed the tax credits in whole or part, taxpayers eligible for the tax credits may assign, transfer or convey the credits, in whole or in part, by sale or otherwise to any individual or entity, including, but not limited to, condominium owners in the event the certified historic structure is converted into condominiums. The assignee of the tax credits may use acquired credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed pursuant to chapter 11, 12, 13, (other than the tax imposed under § 44-13-13), 14, 17 or 30 of this title. The assignee may apply the tax credit against taxes imposed on the assignee until the end of the tenth (10th) calendar year after the year in which the substantially rehabilitated property is placed in service or until the full credit assigned is used, whichever occurs first. Fiscal year assignees may claim the credit until the expiration of the fiscal year that ends within the tenth (10th) year after the year in which the substantially rehabilitated property is placed in service. The assignor shall perfect the transfer by notifying the state of Rhode Island division of taxation in writing within thirty (30) calendar days following the effective date of the transfer and shall provide any information as may be required by the division of taxation to administer and carry out the provisions of this section.

(2) For purposes of this chapter, any assignment or sales proceeds received by the taxpayer for its assignment or sale of the tax credits allowed pursuant to this section shall be exempt from this title. If a tax credit is subsequently recaptured under subsection (e) of this section, revoked or adjusted, the seller's tax calculation for the year of revocation, recapture, or adjustment shall be increased by the total amount of the sales proceeds, without proration, as a modification under chapter 30 of this title. In the event that the seller is not a natural person, the seller's tax calculation under chapters 11, 12, 13 (other than with respect to the tax imposed under § 44-13-13), 14, 17, or 30 of this title, as applicable, for the year of revocation, recapture, or adjustment, shall be increased by including the total amount of the sales proceeds without proration.

(e) Substantial rehabilitation of property that is exempt from real property tax shall be ineligible for the tax credits authorized under this chapter. In the event a certified historic structure undergoes a substantial rehabilitation pursuant to this chapter and within twenty-four (24) months after issuance of a certificate of completed work the property becomes exempt from real property tax, the taxpayer's tax for the year shall be increased by the total amount of credit actually used against the tax.

(f) In the case of a corporation, this credit is only allowed against the tax of a corporation included in a consolidated return that qualifies for the credit and not against the tax of other corporations that may join in the filing of a consolidated tax return.

44-33.2-4 Administration.

(a) To claim the tax credit authorized in this chapter, taxpayers shall apply to the commission: (i) prior to the certified historic structure being placed in service for a certification that the certified historic structure's rehabilitation will be consistent with the standards of the Secretary of the United States Department of the Interior for rehabilitation; and (ii) after completion of the rehabilitation work of the certified historic structure for: (A) a certification that the rehabilitation is consistent with the standards of the Secretary of the United States Department of the Interior for rehabilitation, and (B) a certification as to the amount of tax credit for which the rehabilitation qualifies. The commission shall be entitled to rely on the facts represented in the application without independent investigation and, with respect to the amount of tax credit for which the rehabilitation qualifies, upon the certification of a certified public accountant licensed in the state of Rhode Island. The applications shall be developed by the commission and may be amended from time to time.

(b) Within ninety (90) days after the commission's receipt of the taxpayer's application requesting certification for the completed rehabilitation work, the commission shall issue the taxpayer: (i) a written determination either denying or certifying the rehabilitation, and (ii) a certification of the amount of credit for which the rehabilitation qualifies. To claim the tax credit, the commission's certification as to the amount of the tax credit shall be attached to all state tax returns on which the credit is claimed.

(c) No taxpayer may benefit from the provisions of this chapter unless the owner of the certified historic structure grants a restrictive covenant to the commission, agreeing that during the holding period no alterations to the certified historic structure will be made without the commission's approval and in a manner inconsistent with the standards of the Secretary of the United States Department of the Interior.

(d) The commission is authorized to establish a schedule of fees for the review of tax credit applications, but the fees shall be no greater than two thousand dollars (\$2,000) in total for each project.

(e) If information comes to the attention of the commission at any time up to and including the last day of the holding period that is materially inconsistent with representations made in an application, the commission may deny the requested certification or revoke a certification previously given.

44-33.2-5 Information requests.

The tax administrator and his or her agents, for the purpose of ascertaining the correctness of any credit claimed under the provisions of this chapter, may examine any books, paper, records, or memoranda bearing upon the matters required to be included in the return, report, or other statement, and may require the attendance of the person executing the return, report, or other

statement, or of any officer or employee of any taxpayer, or the attendance of any other person, and may examine the person under oath respecting any matter which the tax administrator or his or her agent deems pertinent or material in determining the eligibility for credits claimed and may request information from the commission, and the commission shall provide the information in all cases, to the extent not otherwise prohibited by statute.

44-33.2-6 Election.

Taxpayers who elect and qualify to claim tax credits for the substantial rehabilitation of a certified historic structure pursuant to this chapter are ineligible for any tax credits that may also be available to the taxpayer for the substantial rehabilitation of that particular certified historic structure under the provisions of chapters 33.1 of this title, 64.7 of title 42, and/or 31 of this title.

(As amended by Public Law 125 (S2860SubB) in the 2002 session of the Rhode Island General Assembly)